

**DETAILED ACTION**

1. This application claims benefit of the foreign application: GERMANY 10217006.1 with a filing date 04/16/2002.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 18, 2008 has been entered.
3. Amendment of claims 5-7 and 20, cancellation of claims 1-3 and 8-17 in the amendment filed on August 18, 2008 is acknowledged. Claims 4-7 and 18-22 are pending in the application.

***EXAMINER'S AMENDMENT***

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. Authorization for this examiner's amendment was given in a telephone interview with Sagun Kc on October 27, 2008. The application has been amended as follows:

In claim 4, page 3, line 23, after "acceptable salt," delete "solvate,"

In claim 20, page 9, line 6, after "pharmaceutically" delete "salt, solvate," and insert

--acceptable salt,--

In claim 21, page 11, line 6, after "pharmaceutically" delete "salt, solvate," and insert

--acceptable salt,--

In claim 22, page 13, line 13, after "pharmaceutically" delete "salt, solvate," and insert

--acceptable salt,--

Delete claims **18-19**.

***Reasons for Allowance***

5. Halazy et al. compounds of US 5,726,177 do not contain a carbonitrile or cyano moiety of the instant claimed compounds. Therefore the rejection of claims 4-7 and 20-22 under 35 U.S.C. 103(a) over Halazy et al. '177 have been overcome in the amendment filed on August 18, 2008. Since claims 1-3, 9-10 and 12-16 have been canceled, the rejection of claims 1-3, 9-10 and 12-16 under 35 U.S.C. 103(a) over Halazy et al. '177 has been obviated.

6. Claims 4-7 and 20-22 are neither anticipated nor rendered obvious over the art of record, and therefore are allowable. The closest reference is Halazy et al. US 5,726,177. The difference between the reference and instant claims is that the instant compounds have not been found. A suggestion for modification of above reference to obtain the instant compounds has not been found. Claims 4-7 and 20-22 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rei-tsang Shiao whose telephone number is (571) 272-0707. The examiner can normally be reached on 8:30 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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/REI-TSANG SHIAO /  
Primary Examiner, Art Unit 1626

October 29, 2008

**Application Number****Application/Control No.**

10/511,155

**Examiner**

REI-TSANG SHIAO

**Applicant(s)/Patent under  
Reexamination**

SCHADT ET AL.

**Art Unit**

1626